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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF PACIFIC TELESIS GROUP

MARLIN D. ARD
RANDALL E. CAPE
JOHN W. BOGY
140 New Montgomery Street
Room 1530A, 15th Floor
San Francisco, CA 94105
(415) 542-7634

MARGARET E. GARBER
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

PACIFIC TELESIS GROUP

R. MICHAEL SENKOWSKI
JEFFREY S. LINDER
GREGORY J. VOGT

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

Its Attorneys

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SUMMARY

The FCC faces enormous opportunities and risks in implementing the Telecommunications Act of 1996. The breadth and intensity of the opening comments show that this interconnection rulemaking is a seminal event in the history of telecommunications. The Commission's skill and vision in resolving the myriad critical issues posed in its Notice of Proposed Rulemaking will directly affect the speed, effectiveness and efficiency of competition in the telecommunications marketplace

The FCC's task is complicated by the legal and practical realities which bound its authority and deliberative processes. Under the Act, interconnection and unbundling begin with individualized negotiations and local PUC review aided by appropriate guidance from the Commission. The Act also imposes deadlines by which the Commission must resolve legal, technical, economic and public policy issues of unprecedented importance and complexity.

In reviewing the opening comments, the Commission will find that the submissions often fall into well-recognized camps with predictable proposals. While these comments help to crystallize the major controversies in the docket. they do not always provide a framework for practical and balanced solutions. Moreover. they often seek to unduly expand or contract the agency's role in facilitating local exchange competition.

But there is a striking exception to the pattern of predictability. A consensus has emerged among several major competitive local exchange carriers ("CLECs"), incumbent local exchange carriers ("ILECs") and public utility commissions ("PUCs") for "safe harbors" or "preferred outcomes" to implement the Act. "Safe harbors" or "preferred outcomes" would permit a range of permissible solutions adapted to local conditions while

providing a reasonable measure of uniformity and predictability to the process. Detailed federal standards, on the other hand, would unnecessarily preclude potentially beneficial resolutions while creating an inflexible straight jacket ill-suited to a dynamic industry.

Safe harbors or preferred outcomes would remove many of the otherwise intractable problems in implementing the Act. The Commission could provide basic overarching principles and a range of clearly acceptable outcomes that ensure a coherent and workable national telecommunications policy. At the same time, the Commission could acknowledge that effective procompetitive policies such as those being developed by the California PUC fall well within the range of permissible methods for achieving the Act's goals. Indeed, the comments of major CLECs competing in California and their trade association commend the California PUC program as a successful model for effective procompetitive policies.

We believe that the Commission can establish effective safe harbors by:

- establishing general guidelines for defining bona fide requests by CLECs and the mutual duties of CLECs and ILECs to negotiate in good faith;

- defining basic interconnection points as tandem and/or end office switches; any other point where the ILEC makes interconnection available; and, any other points mutually agreed upon in Section 251 negotiations;

- re-adopting Commission physical collocation rules and rejecting efforts to expand collocation to include unsuitable ILEC locations for all forms of equipment without regard to legitimate security concerns or the ILEC's own reasonable future space requirements;

- defining a workable number of unbundled network elements: loop, transport, local switching, tandem/transit switching, and signalling links, as well as ground rules for seeking access to elements beyond this basic package;

- establishing a reasonable range for pricing benchmarks where TSLRIC is the floor and access charge rates serve as a ceiling with state PUCs allowed to adopt cost and pricing methodologies that ensure recovery of joint, common and embedded costs as well as a reasonable profit on a competitively neutral basis;

- prohibiting IXCs from obtaining interconnection and unbundled network elements for purposes of providing interexchange services;

- permitting reasonable and nondiscriminatory resale restrictions, not requiring further wholesale discounting for below-cost pricing, not requiring resale of promotional offerings, and only subtracting actual net avoided costs in determining wholesale resale rates; and

- permitting reciprocal compensation to be negotiated among the parties.

In order to implement a safe harbors or preferred outcomes road to competition, the Commission should: (1) adopt simple and straightforward rules that track the statute; and. (2) identify a range of acceptable policies or practices for each of the major Section 251 requirements. (*See* Appendix A.) We believe that the California PUC rules and policies clearly would fall within the ambit of acceptable outcomes.

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Pacific Telesis Group ("PTG"), by its attorneys, herewith submits its reply to the opening comments filed in the above captioned proceeding. As detailed below, we believe that the 1996 Act's procompetitive and deregulatory goals can best be served by the establishment of FCC guidelines in the form of "safe harbors" or "preferred outcomes."[1] In such respects, the FCC should expressly recognize the procompetitive policies of the California Public Utilities Commission ("California") as one acceptable model for meeting the statutory requirements.

[1] *See* Appendix A for Proposed Rules.

I. THE FCC CAN BEST ACHIEVE THE ACT'S PROCOMPETITIVE AND DEREGULATORY GOALS BY IDENTIFYING "SAFE HARBORS" OR "PREFERRED OUTCOMES" AS SUGGESTED BY MAJOR CLECs, PUCs AND ILECs (NPRM ¶¶ 25-41)

A. Major CLECs, PUCs, And ILECs Endorse Adoption Of Guidelines For Acceptable Outcomes Rather Than Detailed And Unworkable Federal Prescriptions.

Despite dramatic differences in their interests, major CLECs, PUCs, and ILECs share our conviction that the Commission can best accomplish Congress's objectives by "specify[ing] outcomes that are reasonable and sufficient to satisfy Section 251 requirements but not the exclusive means to do so." (PTG at 2) The Association for Local Telecommunications Services ("ALTS"), on behalf of CLECs, advocates an approach that resembles the preferred outcome regimes of New York and California.[2] ALTS believes that "[a] national preferred outcome approach by the Commission would permit states which seek to introduce competition even more rapidly than the Act to do so, while requiring states and incumbent local exchange carriers to implement at least basic requirements for local competition. . . ." (ALTS at 3-4) Metropolitan Fiber Systems ("MFS") also supports a program that sets minimum standards for the states but allows for flexibility.[3]

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[2] ALTS at 3. All citations are to parties' opening comments in the first phase of this proceeding unless otherwise indicated.

[3] MFS at 5 ("[T]he Commission should focus on setting minimum acceptable standards for interconnection and related arrangements, but should allow flexibility both to permit arrangements that exceed the minimum, and to recognize that the minimum itself will have to change over time.")

PUCs weigh in heavily for a similar federal-state relationship.[4] For example, "the CPUC [California] recommends that the rules be flexible and provide the states with a menu of options from which to choose in opening up the network to competition." (California at 2) Other state regulatory bodies point out the need for "maximum flexibility through the adoption of minimum standards, which permit variances between states to accommodate local concerns and conditions." (Pennsylvania at 17)

Finally, major ILECs share our conviction that detailed national standards would undermine the Act's goals of "speedy implementation of local exchange and exchange access competition pursuant to negotiated interconnection agreements," (BellSouth at 3) while "fail[ing] to provide adequate flexibility to enable carriers (both ILECs and new entrants) and

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[4] Notably, the National Association of Regulatory Utility Commissioners ("NARUC") concurs that "[a] one-size-fits-all policy should be avoided to (a) ensure competition develops expeditiously in all markets, (b) avoid regulatory gridlock, and (c) minimize unnecessary litigation." NARUC at 4. The submissions of the following state PUCs agree that national mandatory standards are not desirable: Alabama Public Service Commission at 9, Alaska Public Utilities Commission at 2, Arizona Corporation Commission at 18-19, California Public Utilities Commission ("California") at 2, Colorado Public Utilities Commission at 16, Connecticut Department of Public Utility Control at 3, Florida Public Service Commission ("Florida") at 6, Georgia Public Service Commission at 2, Idaho Public Utilities Commission at 3-4, Iowa Utilities Board at 4, Indiana Utility Regulatory Commission at 2-3, Kentucky Public Service Commission at 2, Louisiana Public Service Commission at 7-9, Michigan Public Service Commission ("Michigan") at 3-4, Maryland Public Service Commission ("Maryland") at 6, New York State Department of Public Service ("New York") at 18-19, North Carolina Public Staff Utilities Commission at 10-12, Public Utilities Commission of Ohio ("Ohio") at 9, Oklahoma Corporation Commission at 3, Oregon Public Utility Commission ("Oregon") at 4, Pennsylvania Public Utility Commission ("Pennsylvania") at 2, Public Utility Commission of Texas ("Texas") at 4, Wyoming Public Service Commission ("Wyoming") at 12, and Combined Comments of Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont, and South Dakota at 3.

states to respond promptly to changing technology and evolving or unique carrier needs."[5] However, as we and several other ILECs note, the Commission "should identify outcomes that it believes are sufficient to comply with the 1996 Act, without foreclosing private parties and states from implementing different, but equally acceptable, arrangements." (GTE at 12.)[6]

B. The Comments Reflect Support For Identifying California's Rules And Policies As Falling Within Any Reasonable Safe Harbors Or Preferred Outcomes.

California's successful experience with safe harbors underlies the CLECs', PUCs', and ILECs' support for this approach. (PTG at 3-6) Guided by a state legislative mandate adopted in 1994,[7] California's PUC has allowed parties to negotiate most of the terms and conditions of interconnection, while establishing a flexible and workable framework for some of the more controversial issues. (California at 3, 20) This approach has stimulated competitive entry into the local exchange market; and, in just 5 months, we have signed a number of CLEC interconnection agreements, with more expected to be completed in the near future.

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[5] Ameritech at 7. *See also* Bell Atlantic at 2 (FCC "should not adopt rules that preempt negotiators or the states, or that effectively hamstring them.").

[6] Of course, if any state fails to act, the statute provides that the FCC can correct the problem by stepping in to "act for the State commission." 47 U.S.C. § 252(e)(5).

[7] California at 6 (The California legislature has mandated that "all telecommunications markets subject to commission [CPUC] jurisdiction be opened to competition not later than January 1, 1997.")

California adopted its rules in recognition of the wide range of sound interconnection policies available and in response to the unique circumstances of each pair of carriers, both of which make a "one-size fits all policy undesirable." (*Id.* at 15) This California experience, like that of other states, suggests that detailed rules do not expedite the introduction of competition.[8] Accordingly, the Commission should build on the California initiatives, and let market solutions work wherever possible. (*Id.* at 5)

California's regulatory approach has yielded significant and rapid competition. The California market is now open to over 40 facilities-based CLECs. The more than 70 authorized resellers make the market even more competitive. These competitors are located in every major market throughout the state. In furtherance of the California PUC program, we have agreements with MFS, Teleport Communications Group ("TCG"), Brooks Fiber, Pac-West Telecomm, and ICG Access Services.[9]

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[8] *Id.* To the contrary, state regulators in California, Michigan, and Oregon have all noted that specific rules thwart competition and invite disputes. *Id.* at 11; Michigan at 2; Oregon at 21-22, 25.

[9] PTG at 6. Successful state competitive regimes are not limited to California. For example, Illinois, Michigan, Maryland and New York have all aggressively and successfully moved towards competition through regulatory reform that comports with the spirit of the Act.

C. Safe Harbors Or Preferred Outcomes Can Avoid The Policy And Legal Pitfalls Of Detailed Federal Rules.

The comments confirm our showing that the FCC cannot account for all the local variables if its rules are too refined.[10] Important differences between regions include "states' technological, economic, geographic and demographic diversity," (Maryland at 9) and "varying network needs, architectures, and configurations." (New York at 18) By deferring to private negotiations and state commissions as the primary path to interconnection, Congress acknowledged that different circumstances may require different approaches and that a national "interconnection architecture" would slow down competitive entry. (NARUC at 20)

Safe harbors or preferred outcomes also will avoid major federal-state legal controversies that could undermine or jeopardize timely implementation of local exchange competition policies. (NARUC at 9-22) Most importantly, as we and numerous commentators confirmed, Congress did not intend that Section 251 "take precedence over"[11]

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[10] *Id.* at 10 ("the States are better situated than the FCC to impose any technical *requirements* and adjudicate the extraordinarily fact-rich disputes that will undoubtedly arise between some parties"); California at 3 ("states ought to have the freedom to try out various approaches so that they can devise procedures best suited to their individual localities and needs."); Ameritech at 7 ("[I]t is simply impossible to anticipate all permutations of the highly technical and complex issues -- and new and innovative solutions to those issues -- that arise in the context of carrier-to-carrier interconnection.); Oregon at 21-22 (States can experiment and respond more quickly to changed conditions.).

[11] PTG at 12. To the contrary, Section 2(b) continues to confirm that states retain authority over intrastate activities. Bell Atlantic at 4-8; New York at 2; NARUC at 9-14; Maryland at 13-14; District of Columbia Public Service Commission at 10; Oregon at 12-13; Illinois Commerce Commission ("Illinois") at 6-7; Michigan at 3.

or "eviscerate"[12] Section 2(b). Had Congress intended the FCC to "determine" or "establish" prices, it would have put the pricing standards in Section 251 and merely instructed the States in Section 252 to follow the FCC's regulations. (PTG at 12-13) It did not do so. Instead, Congress included Section 251(d)(3) as a "red flag to the Commission," warning the agency not to preclude enforcement of a state regulation unless it was plainly inconsistent with the Act.[13]

D. The Most Aggressive Proponents Of Detailed Federal Standards Are The Dominant Interexchange Carriers And Their Surrogates, All Of Whom Have Strong Incentives To Delay RBOC Competitive Entry Into The Interexchange Marketplace.

There is no denying that AT&T and MCI have strong business reasons to erect barriers to Regional Bell Operating Company ("RBOC") entry into the interexchange market. Several interexchange carriers ("IXCs") could hardly be more explicit in their goal of delaying competitive RBOC entry into their markets. For example, LDDS WorldCom proposes that access reform be completed prior to any RBOC entry into interLATA services. (LDDS at 66) Similarly, MCI contends "it would not be appropriate to allow RBOC entry into interLATA markets until the universal service issue is resolved." (MCI at 75) Competitive Telecommunications Association ("CompTel") goes even further, urging the FCC to "clarify" that RBOCs "do not qualify to enter the in-region interLATA market until

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[12] California at 2. As NARUC points out, proposed modifications to Section 2(b) were dropped in conference, further indicating that Section 2(b) survives. NARUC at 10.

[13] PTG at 14. Section 601(c) further limits FCC authority. New York at 7; NARUC at 13-14; Oregon at 12.

they provide exchange access at TSLRIC [incremental cost-based] rates pursuant to co-carrier arrangements under § 251(c)." (CompTel at 85) In addition, Cable & Wireless ("C&W") is demanding a large number of interconnection points that are technically infeasible to offer. (C&W at 14)

The Commission should be mindful of IXC business objectives to delay competition, which will harm consumers. With local prices tightly regulated by state commissions, and with interstate toll prices set orders of magnitude *above their TSLRIC,* the largest and most immediate consumer welfare gain will come when RBOCs enter the long distance market, eroding toll prices. If IXCs are permitted to "game" the process to delay competitive RBOC entry, consumers will be made worse off.[14] The Commission should be properly skeptical of the IXCs' demands for detailed national standards in the face of facts and experience showing that preferred outcomes produce a superior result for competition.

II. SAFE HARBORS OR PREFERRED OUTCOMES SHOULD IDENTIFY A RANGE OF ACCEPTABLE OUTCOMES (NPRM ¶¶ 42-71)

A. ILECs And CLECs Have A Mutual Duty To Negotiate In Good Faith. (NPRM ¶¶ 46-48)

We urge the Commission to adopt safe harbors or preferred outcomes to stimulate meaningful negotiations between ILECs and CLECs and to assist parties in meeting their duty under Section 251(c)(1) to bargain in good faith. In such respects, the comments of several major CLECs highlight the effectiveness of California rules in ensuring timely, good

[14] We agree that "prescribing detailed rules in advance runs the risk of allowing parties interested only in blocking long distance competition to game the regulatory process to their anticompetitive advantage." Bell Atlantic at 3.

faith negotiations. For example, TCG explained that under California's "preferred outcomes" rules, "some CLECs were willing to 'bargain' certain 'preferred outcomes' in exchange for better terms on other issues that were uniquely important to them," and "multiple parties were able to reach individualized agreements with Pacific Bell."[15]

In our opening comments, we proposed a process to encourage parties to act in good faith during negotiations. (PTG at 16-21) A CLEC would first submit a bona fide request containing a certification that it intends to use the requested interconnection or unbundled element in the provision of a competitive exchange or exchange access service; a full description of the functionality requested and the need for the network element; and a commitment to pay the reasonable costs of implementing the request. In the negotiating process, technical feasibility, price, and other factors would be evaluated and resolved. These guidelines would establish a procedure for ensuring bona fide requests as well as good faith negotiations.[16]

[15] TCG at 16. *See also* ALTS at 3 (stating that the Commission's rules should resemble the "preferred outcomes" approach used by California); Cox at 45-46 (urging the Commission to establish "default" results to apply in the absence of agreement).

[16] United States Telephone Association ("USTA") recommends a similar model for negotiations. USTA at 14-15. Other ILECs support this proposal in concept. *See* Bell Atlantic at 15; BellSouth at 17-18; GTE at 15-16; PTG at 16-21.

B. Interconnection Issues Appear To Be Satisfactorily Resolved Under Existing FCC And State Policies Such That Only General Guidelines Are Needed. (NPRM ¶¶ 49-52)

Very few opening comments devote significant attention to interconnection issues raised in the NPRM. This lack of comment is, at least in part, caused by the success that has been achieved by states and negotiating parties in establishing reasonable points of interconnection. Simple, broad guidelines from the FCC are sufficient to ensure that Section 251(c)'s interconnection requirements are fulfilled.

Our proposal provides a sound basis for a safe harbors or preferred outcomes approach. Specifically, the Commission should find that an interconnection agreement satisfies Section 251, as well as Section 271(c)(2)(B)(i), if it provides interconnection upon request at (1) tandem and/or end office switches, (2) at any other geographic point where the BOC currently makes interconnection available (subject to capacity limitations), and (3) there is a publicly disclosed, non-discriminatory process for considering within a reasonable time bona fide requests for interconnection at other technically feasible points. Many of the concerns expressed in the opening comments would be completely addressed under our proposal.[17]

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[17] *See, e.g.*, American Communications Services, Inc. ("ACSI") at 12 (interconnection points should change with technology); Ameritech at 12-16 (same); ALTS at 20 ("ALTS endorse[d] the use of . . . 'preferred outcomes,' as used by . . . California, for example, to provide a framework under which national minimal interconnection can take place, while states which wish to advance beyond such levels would be free to do so."); Bell Atlantic at 20-21 (interconnection points should change with technology); BellSouth at 16-17 (same); Florida at 13-14 (same); GTE at 18-19 (same); Illinois at 31-32 (same); MFS at 14-16 (same); Michigan at 8-9 (same); National Cable Television Association ("NCTA") at 32 (same); New York at 33 (continued...)

C. Collocation Safe Harbors Should Be Based On The FCC's Prior Rules. (NPRM ¶¶ 67-70)

The comments confirm that the FCC's original collocation rules constitute an appropriate safe harbor.[18] California, for instance, adopted collocation rules patterned after the FCC's rules, and there has not been a collocation complaint since then. (California at 14-15.) These facts belie MFS's statements that rigid federal requirements are necessary to protect and enforce collocation rights. Accordingly, departures from the prior rules discussed below are inappropriate and unwarranted.

Physical and/or virtual collocation. Since § 251(c)(6) is the FCC's sole source of authority for collocation (and the taking it entails),[19] Ameritech and SBC are correct that the Act does not grant the FCC the authority to mandate virtual collocation in addition to

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[17](...continued)
(same); NYNEX at 65 (same); Rural Telephone Cooperative ("RTC") at 31-32 (same); SBC Communications Inc. ("SBC") at 25-36 (same); Sprint at 14 (same); TCG at 23-25 (same); Time Warner Communications Holdings ("TW Comm") at 29-30 (same); USTA at 12-17 (same); DOJ at 15-19 (same).

[18] *See* PTG at 34-36. To the extent that the FCC creates guidelines for the states, USTA at 19 recommends that the FCC re-adopt its original collocation standards. TW Comm at 39 "submits that the Commission should immediately reaffirm its original rules governing mandatory physical collocation as part of its national standards." ALTS at 21 explains that the FCC's standards should "accommodate the pro-competitive approaches of such states as New York...and California...." Various other ILECs and states recommend a safe harbors approach. *See, e.g.*, Bell Atlantic at 33; Cincinnati Bell ("CBT") at 15; GTE at 24; Florida at 15; Ohio Consumers' Counsel at 15; New York at 34; and Wyoming at 21-22.

[19] Sprint at 21 errs when it agrees with the FCC's tentative conclusion (NPRM, ¶ 79) that its expanded interconnection policies should continue to apply pursuant to §§ 201 and 251(g). Those sections do not authorize the FCC to mandate collocation.

physical collocation.[20] Virtual collocation can occur only as a default when physical collocation is not practical, or by agreement. (Ameritech at 24; SBC at 66) Moreover, the FCC has decided against generally requiring both.[21]

Tariffing. As USTA and SBC note, tariffs and averaged rates are inappropriate under the structure of the Act. The individualized negotiations and agreements contemplated under Section 251 and 252 are the antithesis of general tariffed offerings. (USTA at 19; SBC at 64)

Premises. Collocation cannot arbitrarily extend to all ILEC buildings and structures, as proposed by AT&T, MFS, and TCG.[22] As Time Warner states, Congress evinced no intent to change the FCC's rules as to where physical collocation must take place.[23] Only

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[20] AT&T at 41; MCI at 53; MFS at 17, 23. MCI at 56, and MFS at 33, would ensure that virtual collocation is an unauthorized taking of LEC property by requiring LECs to purchase interconnector equipment for $1.00 and lease it back to the interconnector at that price. The interconnector would retain ownership, except bare title, and would be taking central office space occupied by the equipment.

[21] Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, 7389-91 (1992) ("Expanded Interconnection"). Sprint is wrong when it states that virtual collocation is less invasive against ILECs than physical collocation. Sprint at 19; *see* PTG at 32-33, 36.

[22] AT&T at 40; MFS at 22; TCG at 32. MFS at 23-24, also describes its alleged difficulty of obtaining access to some buildings. This is a problem between MFS and landlords, and it would be inappropriate to impose additional obligations on the ILECs to solve it.

[23] Time Warner at 34, citing 47 C.F.R. § 64.1401(d).

central office-type buildings must be available for collocation, which reflects the technical difficulties of including other buildings.[24]

Types of equipment. Contrary to the statements of some parties,[25] reasonable limits can be placed on the types of equipment to be collocated. Section 251(c)(6) only requires collocation of equipment "for interconnection or access to unbundled network elements." Therefore, MFS is wrong when it argues that interconnectors should have the same right as LECs to collocate enhanced services equipment. In fact, the FCC rejected that position in adopting its prior rules in part because enhanced services equipment "could readily be located outside the LEC central office and achieve technical comparability with LEC enhanced service equipment located inside the central office."[26]

Uses other than interconnection or access to ILEC. Despite claims by MCI, MFS, and TRA,[27] collocation cannot be required for purposes other than interconnecting the collocator's network to the LEC's network.[28] Section 251(c)(6) does not authorize

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[24] *See* PTG at 34 n. 62, 36-37.

[25] ALTS at 21; AT&T at 40; MCI at 53; MFS at 24.

[26] *Expanded Interconnection*, 7 FCC Rcd 7369, 7390 n.93 (1992). MFS's statement, MFS at 25, that distinctions between enhanced (*i.e.*, information) and telecommunications services are disappearing is contrary to the provisions of the Act that provide distinctly different definitions and regulatory treatment for these services. *See, e.g.*, 47 U.S.C. §§ 153(41) and (51).

[27] MCI at 53; MFS at 24; TRA at 47-48.

[28] Section 251(c)(6) is consistent with the FCC's rule that physical collocation "enables interconnectors" to "use such equipment to connect interconnectors' fiber optic systems . . . with the local exchange carrier's equipment and facilities . . . ." 47 C.F.R. § 64.1401(d)(2).

mandatory collocation of equipment that is 1) interconnected at both sides to the LEC's network[29] or 2) used to interconnect one collocator to another.[30] Such a requirement would be unlawful because it is not expressly authorized by statute.

Space limitations. ILECs must place reasonable limits on the amount of space collocators can occupy to ensure efficient use of the ILEC's property, avoid warehousing, and protect other competitor's rights of access. MCI, MFS, and TCG oppose such limits based on their incorrect view that central office space generally is not a scarce resource.[31] However, we are running out of space in some offices, and this shortage is spreading with the advent of local competition. If one collocator is allowed to reserve unlimited space in excess of its actual needs, as MFS suggests, other potential collocators will be shut out.[32] Requiring an ILEC to allow a CLEC to control more space than necessary for its reasonable interconnection needs would exceed what the statute authorizes and, therefore, would constitute an illegal taking of our property. Our allocation of space to interconnectors in 100

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[29] MFS at 66 admits that "a carrier desiring access to unbundled elements must provide some material elements of the service . . over its own network . . .."

[30] The first point is the same as IDCMA's past proposal and would create the extreme network inefficiencies that we have described. Comments of Pacific Bell and Nevada Bell, CC Docket No. 91-141, Transport, Phase II (April 2, 1993). The second would allow collocators to simply use our real estate to build out their networks without any need for interconnection or access to our network.

[31] MCI at 56; MFS at 23; TCG at 33.

[32] MFS at 22-23.

square foot sections, with a maximum of 400 square feet for any one interconnector, is reasonable at the present time.[33]

ILEC growth needs. The Commission should reaffirm its prior decision to allow LECs to resume space for its own future business needs.[34] Preserving space for reasonably anticipated ILEC growth and future planning is not improper warehousing.[35] Put in simplest terms, we need to reserve space to meet our universal service obligations.

Security arrangements. Cages and other security measures are essential to protect all interconnectors and our end users from risks posed by unrestricted access to our and everyone else's equipment. MCI at 58 is wrong when it states that "special security arrangements, such as cages, alarms, etc. should only be installed at the request of the interconnector . . . ." (*See also* MFS at 29 n.36)

Subsidies for AT&T. Finally, AT&T at 42, with unfettered hubris, states, "[i]n the event physical collocation at the designated premises is genuinely not available, the ILEC should be required to provide the necessary trunking at no extra cost to enable the ALEC to connect to the designated equipment elsewhere . . . ." Section 251(c)(6) does not require the

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[33] According to TCG, 400 square feet would allow over 16,000 DS1-equivalents at a central office. *See* Direct Case of Pacific Bell at 58-61, 66, Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162 (filed August 20, 1993).

[34] *Expanded Interconnection*, 7 FCC Rcd 7369, 7408 (1992) ("[R]equiring LECs to expand their facilities or relinquish space reserved for their future use . . . could interfere with the LECs' ability to serve existing ratepayers and might impose considerable and unnecessary expense . . . .")

[35] AT&T at 41; TCG at 32; TRA at 47.

ILEC to extend its network to provide physical collocation. Accordingly, there is no basis for shifting the CLEC's costs to the ILEC.

D. FCC Safe Harbors Should Include A Minimum Set Of Unbundled Network Elements. (NPRM ¶¶ 77-92)

1. Access to unbundled network elements is not unlimited, but rather is subject to significant qualifiers. (NPRM ¶ 86)

Many commenters stray from or ignore the explicit requirements of the Act regarding network unbundling. They treat access to unbundled elements as an unbounded right, limited only by the imagination of requesting CLECs Under the Act, however, access to unbundled network elements is only required where (1) the requested access relates to a facility or equipment used in the provision of a telecommunications service under Section 153(29) of the Act,[36] (2) it is technically feasible for the ILEC to provide the unbundled element,[37] (3) where ILEC proprietary interests are at issue, the requesting party demonstrates access is

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[36] "Network Element" is defined in section 153(29) of the Act as:

> [A] facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

The wording of section 153(29) -- *i.e.*, "used in", "provided by" -- clearly signifies that a network element means something presently used in the network. Therefore, because we do not offer dark fiber, it is not appropriate to even begin analyzing whether it should be treated as an unbundled network element.

[37] 47 U.S.C. § 251(c)(3).

"necessary,"[38] (4) where such proprietary interests are not at issue, the requesting carrier demonstrates that the lack of access would "impair" its ability to provide service,[39] and (5) the ILEC receives full cost compensation for providing the element.[40]

2. Unbundled access to some basic elements is technically feasible today. (NPRM ¶ 87)

The IXCs have proposed a panoply of "network elements" in their unbundling wish lists. Some of these may be provided today,[41] but others are clearly infeasible or are not even "network elements" within the statutory definition. As our opening comments point out, the preferable course is to have the FCC establish safe harbors containing certain core elements, with other unbundling requests worked out through negotiations. (PTG at 2) Our assessment of the feasibility of specific IXC proposals is discussed below.

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[38] GTE has it exactly right when it states:

> Section 251(d)(2)(A) recognizes that many elements of ILEC networks may be proprietary, and sets a suitably strict standard for the FCC to consider in determining whether those elements should be unbundled. Under that standard, unless the requesting carrier simply could not provide the service it seeks to offer without access to the element, unbundling should not be required. In this regard, availability of the feature or function from other sources would preclude a finding of necessity. If unbundled access is in fact necessary, then the ILEC must be compensated for the use of its intellectual property. (GTE at 30-31 (footnotes omitted))

[39] *See* 47 U.S.C. § 251(d)(2)(B); GTE at 29-31.

[40] 47 U.S.C. § 252(d)(1).

[41] We caution, of course, that the FCC should not mandate that ILECs everywhere in the country should provide any network element that one ILEC can offer. Our network capabilities are markedly different from the other 1,300 plus ILECs.